IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRP.No. 415 of 2001()

OP.370/1999 of ADDL. DISTRICT COURT, THALASSERY

.....

REVN. PETITIONER: Respondent:

The Kerala State Electricity Board, rep. by the Seceretary, KSEB, Trivandrum.

BY ADV. SRI.T.G.RAJENDRAN SC FOR K.S.E.B.

RESPONDENT:

P.P. Narayanan Nair, S/o. Parameswaran Nair, Puthenpurakkal P.O., Panappuzha amsom desom.

BY ADV. SRI.K.V.SOHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/10/2007, ALONG WITH CRP NO. 1282 OF 2001 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on CMP 6728/01 in CRP 415/2001

Dismissed.

SD/- M.N.KRISHNAN, JUDGE.

30/10/2007

M.N.Krishnan, J.

==========

C.R.P.Nos.415 & 1282 of 2001

==========

Dated this the 30th day of October, 2007.

JUDGMENT

C.R.P.No.415 of 2001 is preferred against the order of the District Judge, Thalassery in Electricity O.P.No.370 of 1999 whereby the learned District Judge directed the Kerala State Electricity Board to pay a sum of Rs.4,01,838/- with interest at 8% per annum on Rs.2,87,381/-. C.R.P.No.1282 of 2001 is a revision preferred against the order of the District Judge, Thalassery in Electricity O.P.No.369 of 1999 whereby the court directed the Electricity Board to pay to the petitioner a sum of Rs.2,31,571/- together with interest at 8% per annum on Rs.1,94,995/-. When C.R.P.No.415 of 2001 came up for admission, there was a direction to the respondent - Electricity Board to make payment of 50% of the amount within a period of of one month. The said order was passed on 12.11.2001. In C.R.P.No.1282 of 2001 when the stay application came up for hearing, this court directed the Board to deposit in the court

below a sum of Rs.25,000/- for payment to the claimant.

2. The main contention by the Board is that the compensation granted is excessive and it was not correct on the part of the court to award compensation in the light of the decision reported in **Kumba Amma** v. **K.S.E.B.** - 2000(1) K.L.T. 542 wherein this Court held that the value of annuity shall be calculated on the basis of 5% return. The matter was taken up before the Apex Court and the Apex Court in the decision reported in **K.S.E.B.** v. **Livisha** - 2007(3) K.L.T. 1 held that what are the factors to be considered and what is the proper method to be used. The court held thus:

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in

relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

So with the above directions, the orders under challenge were set aside and the matter was remitted back to the High Court for fresh consideration. In the light of the decision of the Apex Court referred to above, a factual analysis of the matter becomes very relevant for which both parties may have to adduce additional evidence. In a given case, some times the claimant may be entitled to more if he satisfies the entire conditions stated in the Apex Court decision.

3. Therefore, the orders under challenge are set aside and the matter is remitted back to the trial court for fresh consideration on condition that the Kerala State Electricity Board deposits 50% of the amount earlier awarded within a period of six weeks from today and the petitioners therein are permitted to withdraw the said amount. It is also made clear that it is an open remand. Parties are at liberty to raise whatever they want to raise in support of their respective contentions and the matter

be disposed of in accordance with law. Parties are directed to appear before the court below on 17.12.2007. It is desirable that the court below disposes of the matter as expeditiously as possible.

Civil Revision Petitions are disposed of accordingly.

M.N.Krishnan,
Judge.

ess 30/10